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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Request for an Emergency Declaratory)	CC Docket No. 94-102
Ruling Filed Regarding Wireless)	
Enhanced 911 Rulemaking Proceeding)	DA 98-1504

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

I. INTRODUCTION

Pursuant to the July 30, 1998 Public Notice ("Public Notice") of the Federal Communications Commission ("Commission") in the above-referenced proceeding, Nextel Communications, Inc. ("Nextel") respectfully submits these reply comments.

On or before August 14, 1998, approximately 18 parties filed comments in response to the July 20, 1998 request of the State of California 911 Program Manager ("California") that the Commission clarify the following issues:

- (1) whether wireless carriers have an obligation to deploy Enhanced 911 ("E911") services where the carrier has been provided no immunity from liability for the provision of E911 service;
- (2) whether the Commission's E911 cost recovery rules encompass the cost of obtaining insurance policies covering the provision of wireless E911 services; and
- (3) a clarification of the Commission's definition of "appropriate PSAP" in the E911 First Report and Order.^{1/}

The overwhelming majority of commenters support the need for wireless carriers' protection from liability for the provision of

^{1/} Public Notice at p. 2.

E911 services, and agree that it is the Commission's responsibility to ensure that protection while allowing the implementation of E911 to move forward.^{2/} Only three of the commenters argue that wireless E911 should not be conditioned on the assurance of liability protection, but none of those commenters oppose providing such protection.^{3/}

Because wireless carriers cannot afford and should not be subjected to the overwhelming risk of liability associated with providing these emergency services to the public, the Commission should: (a) condition the obligation of covered carriers to provide E911 service on the existence of satisfactory liability protection;^{4/} (b) preempt state law and provide wireless carriers protection from liability on a nationwide basis; or (c) allow the filing of Commercial Mobile Radio Service ("CMRS") information-only

^{2/} See Comments of SBC Wireless, Inc. ("SBC") at pp. 2-4; BellSouth Corporation ("BellSouth") at pp. 5-6; Bell Atlantic Mobile, Inc. ("Bell Atlantic") at p. 2; Airtouch Communications, Inc. at pp. 2-3; Omnipoint Communications, Inc. ("Omnipoint") at pp. 2-4; Cellular Telecommunications Industry Association ("CTIA") at p. 4; Trueposition, Inc. at p. 2; GTE Service Corporation at pp. 3-5; United States Cellular Corporation ("USCC") at pp. 2-6; Personal Communications Industry Association ("PCIA") at pp. 2-3; AT&T Wireless Services, Inc. ("AT&T") at pp. 2-3; Rural Telecommunications Group ("RTG") at pp. 2-4; Cellular Carriers Association of California at pp. 3-4; and Ameritech Mobile Communications, Inc. at p. 1.

^{3/} Comments of Association of Public-Safety Communications Officials-International, Inc. ("APCO") pp. 1-2; National Emergency Number Association ("NENA") at p. 2; and California Highway Patrol ("CHP") at p. 2.

^{4/} Wireless carriers are entitled to at least the same liability protection as that afforded wireline carriers in their provision of E911 services.

tariffs which include provisions limiting liability for E911 calls.^{5/}

Given the significant support for Commission action regarding wireless E911 liability issues -- just as there was in the earlier stages of this proceeding^{6/} -- and the significant "real-world" evidence that has accumulated since that time that lack of liability protection is delaying wireless E911 implementation,^{7/} the Commission should revisit its earlier decisions in this proceeding.^{8/}

II. DISCUSSION

A. **Liability Protection**

Based on the comments submitted in this proceeding, there is overwhelming support for Commission provision of liability protection for wireless carriers in their provision of E911 services. As noted by SBC, California is only one of seventeen states that do not provide any form of immunity for wireless carriers in their provision of E911 services.^{9/} The continued lack of federal action to limit liability is an obstacle to

^{5/} See, e.g. Comments of CTIA at p. 4; Bellsouth at p. 6; RTG at pp. 1-2,4.

^{6/} See Comments of Bellsouth at p. 2, fn. 6, listing the earlier comments and other filings in support of liability protection for wireless carriers.

^{7/} Comments of SBC at p. 4; Bellsouth at p. 2.

^{8/} See Report and Order, 11 FCC Rcd 18676 (1995); Memorandum Opinion and Order, 12 FCC Rcd 22665 (1997).

^{9/} Comments of SBC at p. 2.

implementation of E911 services in those states.^{10/} Given the Commission's goal of implementing wireless E911 services on a consistent nationwide basis to avoid customer confusion and other complexities,^{11/} it is critical to the continued implementation of the Commission's goals that it take action to protect carriers from liability.^{12/}

As the commenters noted, the Commission has more than one avenue for providing sufficient liability protection. First, the Commission can order that liability protection is a precondition to providing wireless E911 services,^{13/} just as it already requires that a cost recovery mechanism be in place before a wireless carrier is required to comply with a PSAP's request for E911 service.^{14/} Second, given the need to ensure that the Commission's goals of E911 service are realized, the Commission could preempt state law by enacting a nationwide liability protection for wireless carriers. Third, the Commission could permit wireless carriers to file federal informational tariffs that include provisions protecting them from liability for providing E911 services. Each of these options is supported by the record, and each would provide carriers the protections they need to ensure

^{10/} Comments of BellSouth at p. 2.

^{11/} Report and Order at para. 104.

^{12/} See Comments of Trueposition at p. 4.

^{13/} However, this would continue the possibility that states do not enact the necessary protections, thus continuing the current delays in deployment.

^{14/} Memorandum Opinion and Order at para. 9.

that consumers are provided the E911 services contemplated by the Commission's orders in this proceeding.

To the extent the Commission fails to provide this liability protection, most commenters agree that the Commission must allow for the recovery of the cost of insurance premiums related to E911 services.^{15/}

B. Appropriate PSAP

None of the commenters disagreed that the Commission had properly clarified in the Memorandum Opinion and Order that the state/local authorities have the responsibility to determine the proper routing of wireless E911 calls.^{16/} As Bell Atlantic and the CHP further noted, CMRS carriers are to continue sending their 911 calls to the incumbent PSAP provider, i.e., the PSAP to whom the wireless carrier previously transmitted calls, until the state/local authorities finally determine the "appropriate PSAP."^{17/} A state's failure to decide the proper routing could, as Nextel has experienced in Monroe County, New York, "create a serious risk of confusion and uncertainty. . ."^{18/} It was to avoid such confusion and uncertainty and -- Nextel would assert, to avoid having carriers caught in disputes between differing

^{15/} See, e.g., Comments of Bellsouth at p. 7; Bell Atlantic at p. 4; Omnipoint at p. 4, 6; and CTIA at pp. 6-7.

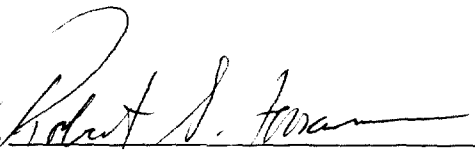
^{16/} See, e.g., Comments of Bell Atlantic at p. 5; APCO at p. 3.

^{17/} Comments of Bell Atlantic at p. 5; CHP at p. 1.

^{18/} Id. at p. 6.

state/local authorities^{19/} -- that the Commission concluded wireless carriers should continue transmitting calls to the incumbent PSAP. Thus, because the Commission cannot, as USCC stated in its comments, "force states to act responsibly," the Commission should restate its rules to ensure that state and local authorities are aware of and understand wireless carriers' obligations, and to protect wireless carriers from lawsuits and other costly proceedings when they comply with the Commission's 911 call routing policies.

Respectfully submitted,

By 

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^{19/} As Nextel stated in its comments herein, Monroe County, New York recently sued Nextel for transmitting 911 calls to the state police rather than its own county PSAP. Pursuant to a contract Nextel previously entered into with the New York State Police, Nextel has continued transmitting 911 calls to the State Police 911 system.

CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 24th day of August 1998, I caused a copy of the attached Reply Comments of Nextel Communications, Inc. to be served by hand delivery to the following:

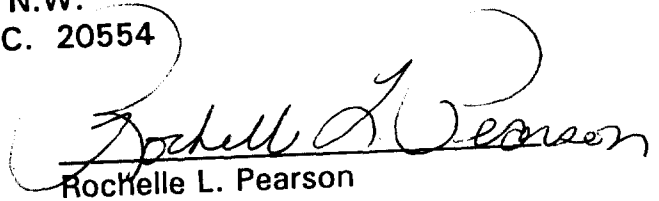
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